



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Environmental Tectonics Corporation

File: B-248611

Date: September 8, 1992

Timothy S. Kerr, Esq., Starfield & Payne, for the protester, James J. Paris, Esq., and Douglas P. Larson, Jr., Esq., Department of the Navy, for the agency. Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposed sole-source award under the authority of 10 U.S.C. § 2304(c)(1) (1988) is not objectionable where the agency reasonably determined that only one source was available to supply the required equipment and the protester fails to show that it had currently available equipment which could meet the agency's requirements.

DECISION

Environmental Tectonics Corporation protests the proposed sole-source award of a contract to Cowan Manufacturing, Ltd. under request for proposals (RFP) No. N00123-92-R-6050, issued by the Department of the Navy for base and option quantities of transportable recompression chamber system (TRCS) units. The protester argues that the agency improperly determined that Cowan was the only responsible source capable of meeting the agency's needs.

We deny the protest.

A TRCS unit is a small, lightweight, transportable, two-man hyperbaric chamber system which is designed to provide lifesaving recompression treatment to military divers suffering from severe decompression-related illnesses. The TRCS unit, which has two separate, transportable chambers that can be placed on small aircrafts, road vehicles, and small naval vessels, is critical to the health and safety of those personnel diving in remote locations, under extreme environmental conditions, far from emergency medical facilities.

In 1988, following a market survey which revealed that Cowan was the only source, domestic or foreign, that had manufactured a satisfactory TRCS unit that the agency published in the Commerce Business Daily (CBD) a notice that, consistent with the statutory preference at 10 U.S.C. § 2325 (1988 and Supp. III 1991) for nondevelopmental items, it intended to purchase two TRCS units from Cowan, an Australian company and the original equipment manufacturer of the TRCS unit. The notice stated that the Cowan TRCS unit was the only portable recompression chamber system currently available that could be accommodated in small aircraft, road vehicles, and small naval vessels. The notice further stated that the Cowan TRCS unit could be easily adapted to other allied forces' equipment through the use of a NATO flange developed by Cowan. The notice referenced footnote 22 which indicated that offerors had 45 days to identify their interest and capability to respond to the requirement.

In March 1992, the agency completed its 3-year, \$1.3 million testing and evaluation of the two Cowan TRCS units purchased pursuant to the 1988 notice, which included operating the TRCS units at a number of field sites under extreme climatic and environmental conditions in order to assess the durability, reliability, and safety of the item. The agency concluded that the Cowan TRCS units fully satisfied the agency's requirements in support of diving operations.

Prior to completing the testing and evaluation of the two Cowan TRCS units, the agency again published in the CBD on March 8, 1991, a notice of its intention to procure on a sole-source basis from Cowan quantities of the TRCS units, related equipment, and a technical data package. This notice also referenced footnote 22. By letter dated March 13, the protester, which submitted marketing brochures and project references, expressed its interest in submitting a proposal to satisfy the agency's requirements and requested a copy of the solicitation. The agency evaluated the information submitted by the protester and concluded that while the protester had excellent qualifications, it currently did not have a TRCS unit which would meet the agency's requirements. For example, the protester submitted information on its Model R-200 emergency transfer chamber. The agency determined that this item would not meet its needs since it lacked the required mobility as it was too large and heavy to be transported on small vehicles to remote, on-site locations; it did not allow for the required exchange of personnel providing medical assistance while

¹Cowan is the successor company to International Innovations, Ltd., the Australian company which was actually named in the notice in the CBD.

maintaining the patient at treatment pressure; and it did not have the required NATO flange. However, the agency apparently never notified the protester of the results of its evaluation concerning the protester's expression of interest. On July 23, the agency published a third notice in the CBD of its intention to procure its requirements on a sole-source basis from Cowan.

The agency then updated its market survey and found that no alternate sources were available to manufacture the TRCS units in accordance with the agency's requirements. In September, the agency's written justification for the procurement of the Cowan TRCS units using other than competitive procedures was approved by the appropriate higher level authority. The justification and approval (J&A) cited the authority of 10 U.S.C. § 2304(c)(1) (1988), which permits a noncompetitive award where only one known responsible source is available and no other type of property or services will satisfy the needs of the agency.

The J&A stated that since Cowan possesses the proprietary design data for the TRCS unit, no other company, as revealed by the market surveys, has been able to build a recompression chamber which includes the critical and essential design characteristics of the Cowan TRCS unit. The J&A stated that the two Cowan TRCS units purchased by the agency underwent costly and extensive testing with the result that the units were found to be fully satisfactory and qualified for operational use. Therefore, since the Cowan TRCS unit was the only TRCS unit that could timely meet the agency's critical operational requirements and since a competitive procurement would involve significant technical risks, require spending substantial sums of money to duplicate research and development efforts already accomplished by Cowan, and repeat costly agency tests and evaluations, the agency determined that it was in its best interests to acquire the TRCS units from Cowan at a price determined by the contracting officer to be fair and reasonable. The J&A also announced the agency's intention to procure a technical data package from Cowan so that future requirements could be competed.

In February 1992, the agency sent a copy of the solicitation, including the item specifications, to the protester as requested by that firm. The solicitation listed eight line items--line item No. 0001 was for the base quantity of eight TRCS units and line items Nos. 0002 through 0008 represented options for up to 40 additional TRCS units and options to obtain licenses for the use of proprietary data rights. The solicitation provided that the base quantities were to be delivered within 16 months after the award and the options could be exercised within 1 year after the award. On March 24, prior to the March 31 closing

date for receipt of proposals, the protester filed an agency-level protest challenging the proposed sole-source award to Cowan. By letter dated April 22, the agency denied the protester's agency-level protest. The agency explained that it intended to award a contract to Cowan because it was the only firm which had satisfactorily manufactured a TRCS unit suitable for the agency's immediate operational use. The agency also recognized that Cowan possessed proprietary design data critical to producing an acceptable TRCS unit. On May 6, the protester filed its protest with our Office.

The protester argues that since the solicitation contains design and performance specifications, it is capable of designing and manufacturing a fully compliant TRCS unit within the 16 month post-award delivery period for the base quantity. In its comments to the agency report, the protester states that it has "fully engineered" a TRCS unit, designated as its Model S-200, and it provides 13 pages of model specifications. The protester maintains that it is an available source for the manufacture of the TRCS units and hence, the agency's decision to make a sole-source award to Cowan is unreasonable and reflects a lack of advance planning.

While the overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for "full and open" competition in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), CICA does permit noncompetitive acquisitions in specified circumstances such as when the items needed are available from only one responsible source. 10 U.S.C. § 2304(c)(1); Kollsman, A Div. of Sequa Corp.; Applied Data Technology, Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18; Astron, B-236922.2, May 2, 1990, 90-1 CPD ¶ 441. Where the agency has substantially complied with the procedural requirements of CICA, calling for the written justification for and higher level approval of the contemplated sole-source action and publication of the required CBD notice, see 10 U.S.C. § 2304(f) (1988 and Supp. III 1991), we will not object to the sole-source award unless it has no reasonable basis. Id. Thus, except in those noncompetitive situations that arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Id.

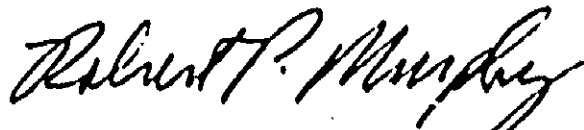
Here, although the protester contends that the agency's decision to make a sole-source award to Cowan was unreasonable, the record shows that the agency properly determined, after publishing three notices in the CBD, conducting two market surveys, and performing 3 years of extensive testing and evaluation of the Cowan TRCS units,

that Cowan currently is the only source capable of satisfying the agency's immediate, critical requirements for TRCS units in support of diving operations. The record shows that while the protester may have the capability of designing and manufacturing a fully compliant TRCS unit, it currently does not have a TRCS unit which would meet the agency's immediate needs. Specifically, the protester has not shown that its Model R-200 emergency transfer chamber, for which it submitted marketing literature in response to the notice in the CBD, meets the required size and weight specifications; is configured to allow for the substitution of medical personnel while maintaining the patient at treatment pressure; and has the required NATO flange. Further, while in its comments to the agency report the protester references a "fully engineered" Model S-200 TRCS unit, and provides 13 pages of specifications for this model, the record shows that the protester in its specifications submission has merely parroted the specifications from the solicitation and has no current item available.

Moreover, the protester's additional allegation that the proposed sole-source award to Cowan reflects a lack of advanced planning is not supported by the record. The record shows that since 1988, as evidenced by three notices in the CBD and two market surveys, the agency has unsuccessfully attempted to obtain sources in addition to Cowan for the manufacture of the TRCS units. However, since Cowan possesses the proprietary design data, no other firm has been able to manufacture a TRCS unit which meets the agency's needs. The agency nevertheless states that it intends to exercise an option to purchase from Cowan a technical data package so that full and open competition for the agency's future requirements can be achieved.

Since it is clear that the protester does not have a TRCS unit which would meet the agency's current needs, we find that the agency reasonably concluded that the protester was not an available source capable of satisfying the agency's requirements for TRCS units in support of diving operations. Therefore, we find the proposed sole-source award to Cowan is proper. See AGEMA Infrared Sys., B-240961, Dec. 28, 1990, 91-1 CPD ¶ 4.

Accordingly, the protest is denied.



ff James F. Hinchman
General Counsel